

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-0807-IWD-E TCEQ ID: RN102776549 CASE NO.: 33545**  
**RESPONDENT NAME: Charley's Concrete Co., Ltd.**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Charley's Concrete, 155 Rose Avenue, Decatur, Wise County</p> <p><b>TYPE OF OPERATION:</b> Wastewater treatment</p> <p><b>SMALL BUSINESS:</b>    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on October 8, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p style="margin-left: 20px;"><b>TCEQ Attorney/SEP Coordinator:</b> None</p> <p style="margin-left: 20px;"><b>TCEQ Enforcement Coordinator:</b> Mr. Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171</p> <p style="margin-left: 20px;"><b>Respondent:</b> Mr. Brent R. Pennington, Vice President, Charley's Concrete Co., Ltd., P.O. Box 1106, Keller, Texas 76244</p> <p style="margin-left: 20px;"><b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> April 19, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> May 16, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine record review. Two violations were documented.</p> <p><b>WATER</b></p> <p>1) Failed to comply with the daily maximum permitted limit of 65 milligrams per liter for Total Suspended Solids [General Permit No. TXG110354, Part III, Permit Requirements, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)].</p> <p>2) Failed the 24-hour acute toxicity test for Pimephales promelas for the monitoring period of 01/01/2006 through 12/31/2006 [General Permit No. TXG110354, Whole Effluent Toxicity Testing, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)].</p>	<p><b>Total Assessed:</b> \$6,790</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$6,790</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Orders Justification:</b>  Environmental receptors have been exposed to pollutants which exceed levels that are protective.</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. Cleaned out the truck wash out pit to allow better solids settlement in the pit on December 31, 2006;</p> <p>b. Relocated the sample location to a more representative point for storm water discharge allowing the Respondent to return into compliance with their effluent limits during February 2007; and</p> <p>c. Conducted and obtained passing results for the annual whole effluent toxicity test on May 10, 2007.</p>

Additional ID No(s): TXG110354



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 19, 2007

<b>DATES</b>	<b>Assigned</b>	21-May-2007	<b>Screening</b>	22-May-2007	<b>EPA Due</b>	
	<b>PCW</b>	30-May-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Charley's Concrete Co., Ltd.
<b>Reg. Ent. Ref. No.</b>	RN102776549
<b>Facility/Site Region</b>	4-Dallas/Fort Worth
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	33545	<b>No. of Violations</b>	2
<b>Docket No.</b>	2007-0807-IWD-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Water Quality	<b>Enf. Coordinator</b>	Jorge Ibarra, P.E.
<b>Multi-Media</b>		<b>EC's Team</b>	EnforcementTeam 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$7,000

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 22% Enhancement **Subtotals 2, 3, & 7** \$1,540

**Notes** The Respondent was issued one NOV without the same or similar type of violations and self-reported four months of effluent violations.

**Culpability** No 0% Enhancement **Subtotal 4** \$0

**Notes** The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** 25% Reduction **Subtotal 5** \$1,750

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	X
N/A	(mark with x)

**Notes** The respondent achieved full compliance on 05/10/2007.

<b>Total EB Amounts</b>	\$67
<b>Approx. Cost of Compliance</b>	\$2,500

0% Enhancement\*  
\*Capped at the Total EB \$ Amount

**Subtotal 6** \$0

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$6,790

### OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

**Adjustment** \$0

**Notes**

**Final Penalty Amount** \$6,790

### STATUTORY LIMIT ADJUSTMENT

**Final Assessed Penalty** \$6,790

### DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

0% Reduction **Adjustment** \$0

**Notes**

No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** \$6,790

Screening Date 22-May-2007

Docket No. 2007-0807-IWD-E

PCW

Respondent Charley's Concrete Co., Ltd.

Policy Revision 2 (September 2002)

Case ID No. 33545

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102776549

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	4	20%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 22%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

The Respondent was issued one NOV without the same or similar type of violations and self-reported four months of effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 22%

Screening Date 22-May-2007

Docket No. 2007-0807-IWD-E

PCW

Respondent Charley's Concrete Co., Ltd.

Policy Revision 2 (September 2002)

Case ID No. 33545

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102776549

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s) General Permit No. TXG110354, Part III, Permit Requirements, 30 Tex. Admin. Code § 305.125(1), and Tex. Water Code § 26.121(a)

Violation Description Failed to comply with the daily maximum permitted limit of 65 milligrams per liter ("mg/L") for total suspended solids ("TSS"). Specifically, the reported values were as follows: August 2006 - 96 mg/L; and January 2007 - 150 mg/L.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to comply with the permitted limits for total suspended solids ("TSS") resulted in the exposure of insignificant amounts of pollutants which do not exceed levels that are protective of human health or the environment as the result of the excursions.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

62 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,000

Two quarterly events are recommended based on the months the permitted limit was exceeded.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$58

Violation Final Penalty Total \$1,940

This violation Final Assessed Penalty (adjusted for limits) \$1,940

## Economic Benefit Worksheet

**Respondent** Charley's Concrete Co., Ltd.  
**Case ID No.** 33545  
**Reg. Ent. Reference No.** RN102776549  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$2,000	1-Aug-2006	28-Feb-2007	0.6	\$58	n/a	\$58

Notes for DELAYED costs

Estimated cost to provide additional oversight and sampling which may have alleviated or prevented the noncompliance. Date Required is the first day of non-compliance, Final Date is the compliance date.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$58

Screening Date 22-May-2007

Docket No. 2007-0807-IWD-E

PCW

Respondent Charley's Concrete Co., Ltd.

Policy Revision 2 (September 2002)

Case ID No. 33545

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102776549

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 2

Rule Cite(s) General Permit No. TXG110354, Whole Effluent Toxicity Testing, 30 Tex. Admin. Code § 305.125(1), and Tex. Water Code § 26.121(a)

Violation Description

Failed to meet the required limit of greater than 50% survival of the test organisms in 100% effluent for a 24-hour period. Specifically, the respondent failed the 24-hour acute toxicity test for pimephales promelas for the monitoring period of 01/01/2006 through 12/31/2006.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 50%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health and the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

## Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	x
	single event	

Violation Base Penalty \$5,000

One annual event is recommended.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$9

Violation Final Penalty Total \$4,850

This violation Final Assessed Penalty (adjusted for limits) \$4,850

## Economic Benefit Worksheet

**Respondent** Charley's Concrete Co., Ltd.  
**Case ID No.** 33545  
**Reg. Ent. Reference No.** RN102776549  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling	\$500	31-Dec-2006	10-May-2007	0.4	\$9	n/a	\$9
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to conduct the required re-test for pimephales promelas. Date Required is the beginning date of the first annual testing, Final Date is the compliance date.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$9



# Compliance History

Customer/Respondent/Owner-Operator: CN600420434 Charley's Concrete Co., Ltd. Classification: AVERAGE Rating: 2.96  
 Regulated Entity: RN102776549 CHARLEYS CONCRETE Classification: AVERAGE Site Rating: 2.29  
 ID Number(s): WASTE WATER GENERAL PERMIT PERMIT TXG110354  
 PETROLEUM STORAGE TANK REGISTRATION 74685  
 REGISTRATION  
 AIR NEW SOURCE PERMITS ACCOUNT NUMBER WN02150  
 AIR NEW SOURCE PERMITS PERMIT 43350  
 Location: 155 ROSE AVE, DECATUR, TX, 76234 Rating Date: 9/1/2006 Repeat Violator: NO  
 TCEQ Region: REGION 04 - DFW METROPLEX  
 Date Compliance History Prepared: May 22, 2007  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: May 22, 2002 to May 22, 2007  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

### Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
 N/A

B. Any criminal convictions of the state of Texas and the federal government.  
 N/A

C. Chronic excessive emissions events.  
 N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 05/12/2006 (508657)
- 2 05/17/2006 (507851)
- 3 05/17/2006 (507841)
- 4 06/02/2006 (507844)
- 5 06/02/2006 (507845)
- 6 06/02/2006 (507846)
- 7 06/02/2006 (507847)
- 8 06/02/2006 (507848)
- 9 06/02/2006 (507849)
- 10 06/02/2006 (507850)
- 11 06/02/2006 (507837)
- 12 06/02/2006 (507838)
- 13 06/02/2006 (507839)
- 14 06/02/2006 (507840)
- 15 06/02/2006 (507842)
- 16 06/05/2006 (507843)
- 17 07/07/2006 (530164)
- 18 08/03/2006 (530165)
- 19 08/21/2006 (530162)
- 20 08/21/2006 (530163)
- 21 08/21/2006 (530167)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Classification      Moderate

Classification Moderate

Classification	Moderate
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Classification      Moderate

Classification Moderate

Classification Moderate

Classification Moderate

Classification      Moderate

Classification      Moderate

Classification Moderate

Classification      Moderate

Classification Moderate

Classification Moderate

Classification Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter  
Date: 12/31/2006  
Self Report? YES Classification Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter  
Date: 01/31/2007  
Self Report? YES Classification Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CHARLEY'S CONCRETE CO., LTD.  
RN102776549**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-0807-IWD-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Charley's Concrete Co., Ltd. ("Charley's Concrete") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Charley's Concrete presented this agreement to the Commission.

Charley's Concrete understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Charley's Concrete agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Charley's Concrete.

The Commission makes the following Findings of Fact and Conclusions of Law:

### **I. FINDINGS OF FACT**

1. Charley's Concrete owns and operates a wastewater treatment facility at 155 Rose Avenue in Decatur, Wise County, Texas (the "Facility").



2. Charley's Concrete has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During a record review on April 19, 2007, TCEQ staff documented that Charley's Concrete failed to comply with the daily maximum permitted limit of 65 milligrams per liter ("mg/L") for total suspended solids ("TSS"). Specifically, the reported values were as follows: August 2006 - 96 mg/L; and January 2007 - 150 mg/L.
4. During a record review on April 19, 2007, TCEQ staff documented that Charley's Concrete failed to meet the required limit of greater than 50% survival of the test organisms in 100% effluent for a 24-hour period. Specifically, Charley's Concrete failed the 24-hour acute toxicity test for pimephales promelas for the monitoring period of 01/01/2006 through 12/31/2006.
5. Charley's Concrete received notice of the violations on May 21, 2007.
6. The Executive Director recognizes that Charley's Concrete has implemented the following corrective measures at the Facility:
  - a. Cleaned out the truck wash out pit to allow better solids settlement in the pit on December 31, 2006;
  - b. Relocated the sample location to a more representative point for storm water discharge allowing Charley's Concrete to return to compliance with their effluent limits during February 2007; and
  - c. Conducted and obtained passing results for the annual whole effluent toxicity test on May 10, 2007.

## II. CONCLUSIONS OF LAW

1. Charley's Concrete is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, Charley's Concrete failed to comply with the daily maximum permitted limit of 65 mg/L for TSS, in violation of General Permit No. TXG110354, Part III, Permit Requirements, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a).
3. As evidenced by Findings of Fact No. 4, Charley's Concrete failed the 24-hour acute toxicity test for pimephales promelas for the monitoring period of 01/01/2006 through 12/31/2006, in violation of General Permit No. TXG110354, Whole Effluent Toxicity Testing, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a).
4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Charley's Concrete for violations of the Texas Water Code and the





Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

5. An administrative penalty in the amount of Six Thousand Seven Hundred Ninety Dollars (\$6,790) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Charley's Concrete has paid the Six Thousand Seven Hundred Ninety Dollar (\$6,790) administrative penalty.

### **III. ORDERING PROVISIONS**

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Charley's Concrete is assessed an administrative penalty in the amount of Six Thousand Seven Hundred Ninety Dollars (\$6,790) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Charley's Concrete's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Charley's Concrete Co., Ltd., Docket No. 2007-0807-IWD-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Charley's Concrete. Charley's Concrete is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Charley's Concrete if the Executive Director determines that Charley's Concrete has not complied with one or more of the terms or conditions in this Agreed Order.
4. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
5. This Agreed Order, issued by the Commission, shall not be admissible against Charley's Concrete in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.



6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
7. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.



Charley's Concrete Co., Ltd.  
DOCKET NO. 2007-0807-IWD-E  
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## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

  
For the Executive Director

Date 12/03/2007

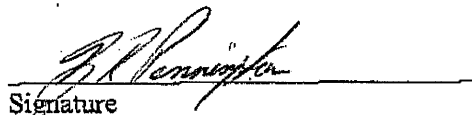
I, the undersigned, have read and understand the attached Agreed Order in the matter of Charley's Concrete Co., Ltd. I am authorized to agree to the attached Agreed Order on behalf of Charley's Concrete Co., Ltd., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Charley's Concrete Co., Ltd. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

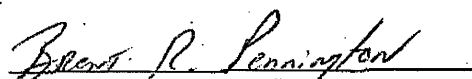
I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

11/28/07  
Date

  
Name (Printed or typed)  
Authorized Representative of  
Charley's Concrete Co., Ltd.

Vice President, CCHC, LLC  
Title  
Gen. Mgr.

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

